

Appln. No. 09/785,700  
Amtdt. dated Apr. 11, 2005  
Reply to Office Action of Dec. 10, 2004  
Docket No. 6169-156

IBM Docket No. BOC9-2000-0017

### REMARKS/ARGUMENTS

These remarks are made in response to the Office Action of December 10, 2004 (Office Action). This response is filed after the 3-month shortened statutory period, and as such, a retroactive extension of time is herein requested. The Examiner is authorized to charge the appropriate extension fee to Deposit Account 50-0951.

In paragraph 3, pages 2 through 5 of the Office Action, the Examiner has rejected claims 1-6, 8-21 and 23-24 under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 6,055,573 to Gardenswartz, *et al.* (Gardenswartz). In paragraph 4, pages 5 through 7, the Examiner has rejected claims 7 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Gardenswartz in view of U.S. Patent No. 6,611,811 to Deaton, *et al.* (Deaton).

In response to the Office Action, Applicants have amended independent claims 1, 10, and 16 to clarify that the shopping stimulation system is a merchant driven system that is designed to alleviate a merchant problem for the merchant responsive to the receipt of a merchant initiated request. Support for this amendment can be found claims 3 and 4 (before amendments), page 9 lines 2-21, page 10, lines 3-9, and throughout the specification. Applicants have amended the dependent claims for consistency with the independent claim amendments.

Additionally, Applicants have amended claims 2 and 17 to emphasize that consumers are identified based on prior purchases and a product consumption rate that indicates that previously purchased products need to be replaced or upgraded, as supported by page 9, lines 9-12, and throughout the specification. Claims 3 and 18 have been amended to emphasize that promotional material and consumer purchase information can include person to person transactions and Internet-based transactions, as supported by page 13, lines 1-16, by page 16, lines 7-14, and throughout the specification. Claim 4, 15, and 19 have been amended to clarify a business necessity, as supported by page 9, lines 14-16. Claims 5 and 20 have been amended to clarify that the

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third-party remote shopping stimulation system responds to merchant requests from said plurality of different merchants, as supported by claim 10 (prior to amendments), by page 13, lines 7-11, and throughout the specification. Claim 10 has also been amended to include the promotional material delivery system within the independent system claim, as supported by claim 15 (before amendment), by item 130 of FIG. 3, and throughout the specification.

No new matter has been added as a result of these amendments, which are fully supported by the specification as indicated.

Prior to addressing rejections a brief review of the Applicants' claimed invention may prove helpful. The Applicants disclose a merchant driven method for solving merchant problems by stimulating commerce responsive to a merchant request. Merchant problems (from column 9, lines 14-16) can include such things as a merchant having excess inventory, a merchant experiencing a revenue shortfall, a merchant receiving a shipment of goods for which a consuming market is needed, and a merchant offering a new or enhanced service or product for which a consuming market is needed. A merchant's problems can be conveyed to a third party system, which solves the merchant's problem by stimulating a market for merchant identified products.

The third party system, referred to as a third-party remote shopping stimulation system can utilize customer purchase information to target a consumer group most likely to be interested in the merchant's product. That is, the stimulation system identifies a subgroup of stimulation susceptible consumers. Promotional material can be conveyed to the susceptible consumers using a promotional material delivery system of the stimulation system. In one embodiment, the stimulation susceptible consumers can be determined based upon a product consumption rate, which indicates that previously purchased products are ready to be replaced or upgraded (page 5, lines 3-10).

Gardenswartz discloses an incentive system for incentivizing customers that comply with an advertiser established behavioral pattern, where compliance and

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incentives are based upon customer offline purchase history. Gardenswartz discloses a targeted promotion system designed to establish specified market behavior directed by advertisers using data-driven incentive schemes.

Specifically, Gardenswartz describes a well that advertisers can affect consumer's offline behavior. Gardenswartz assumes that a consumer's actions on the Internet may not be strongly related to the consumer's preferences as a consumer in the offline world (column 2, lines 44-48). Hence, Gardenswartz ensures that the targeted advertisement has been selected based on the observed offline purchase history of the consumer (column 3, lines 15-17). Gardenswartz takes measures to insure that consumer proprietary information remains relatively confidential (column 3, lines 31-44).

**A. Gardenswartz fails to explicitly teach each claimed limitation of the independent claims.**

Claims 1-6, 8-21 and 23-24 have been rejected under 35 U.S.C. § 102(b) as being unpatentable over Gardenswartz.

Gardenswartz fails to teach a merchant imitated system where a merchant computer system generates a merchant request to stimulate commerce for at least one merchant specified product.

Gardenswartz teaches a value contract (column 15, lines 5-40) can be established with a customer. A value contract is defined as a promotional incentive in which the consumer is offered a reward for complying with a particular behavioral pattern. (See, column 14, lines 52-53.) To fulfill the value contract, a consumer may be required to purchase a pre-selected amount of a specified product within a predetermined amount of time. Value contracts taught by Gardenswartz (FIG. 10) are offered when an analytics unit 16 determines a customer is eligible based upon the purchase history database.

The value contract of Gardenswartz is a customer driven contract based upon a customer's actions. Gardenswartz fails to teach or suggest that a merchant system

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generates a merchant request that is conveyed to a remote system, which stimulates commerce for merchant specified products.

Referring to claims 2 and 17, Gardenswartz fails to provide teachings that consumers are identified based on prior purchases and a product consumption rate that indicates that previously purchased products need to be replaced or upgraded.

Referring to claims 3 and 18, Gardenswartz explicitly limits its teachings to offline purchases (column 2, lines 44-48; column 3, lines 15-17; column 3, lines 31-44). Applicants claim that promotional material and consumer purchase information can include person to person transactions and Internet-based transactions.

Referring to claims 4, 15, and 19, Applicants claim that a business necessity of an inventory flux or a revenue shortfall of the merchant initiates the market stimulation. No equivalent teachings are present within Gardenswartz.

Since Gardenswartz fails to explicitly or inherently teach the claimed limitations of independent claims 1, 10, and 16, the 35 U.S.C. § 102(b) rejections based upon Gardenswartz should be withdrawn. Applications therefore respectfully request that the rejections to claims 1-6, 8-21 and 23-24 be withdrawn.

**B. Deaton fails to cure the deficiencies of Gardenswartz**

In paragraph 4, pages 5 through 7, the Examiner has rejected claims 7 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Gardenswartz in view of Deaton.

Deaton provides teachings of how a discount can be delivered at a store and applied to a customer order. Deaton is a purchase incentive or customer loyalty methodology that rewards designated customers after the customers have already decided to purchase an item. Deaton fails to provide teachings that a merchant can proactively stimulate commerce for a merchant specified product. Consequently, Deaton fails to teach a merchant-driven methodology that permits a merchant to resolve problems, such as business necessities of revenue shortfalls or inventory overstocks.

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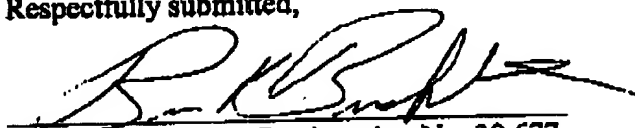
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Specifically referring to claimed limitations, Gardenswartz, Deaton, and combinations thereof fail to explicitly or implicitly teach a merchant computer system for generating a merchant request to stimulate commerce for at least one merchant specified product, where a third-party remote shopping stimulation system responds to the merchant request by targeting a set of consumers for the merchant specified products and providing promotional material to these consumers.

Since each claimed limitation must be taught or suggested by the combination of references under 35 U.S.C. § 103(a), the rejections to claims 7 and 22 should be withdrawn, which action is respectfully requested.

The Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. The Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Response, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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